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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/517,580

08/02/2005

Alexander Fuchs

LU 6020 (US)

1368

34872

7590

09/30/2008

Basell USA Inc.

Delaware Corporate Center II

2 Righter Parkway, Suite #300

Wilmington, DE 19803

EXAMINER

NUTTER, NATHAN M

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

09/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/517,580	Applicant(s) FUCHS ET AL.	
	Examiner Nathan M. Nutter	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7,9 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7,9 and 12-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01-08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 30 July 2008 has been entered.

Response to Amendment

In response to the amendment filed 30 July 2008, the following is placed in effect.

The provisional rejection of claims 1-5, 7 and 9-18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17-30 of copending Application No. 10/517,588 (Fuchs et al US 2006/0167185), is hereby expressly withdrawn.

The rejection of claims 1-5, 7 and 9-18 under 35 U.S.C. 102(b) as being clearly anticipated by Fischer et al (US 6,248,829), is hereby expressly withdrawn.

The rejection of claims 1-5, 7 and 9-18 under 35 U.S.C. 103(a) as being unpatentable over Fischer et al (US 6,248,829) as applied to claims 1-5, 7 and 9-18 above, and further in view of Mehta et al (US 6,583,227), is hereby expressly withdrawn.

The following new grounds of rejection are being made.

Response to Notice of Non-Compliant Amendment

Applicants contend that they “provided a complete list of all claims present in the instant application,” and that “at page 1, ***last paragraph***, as well as ***page 15, lines 12-14***,” gave directions for amending ATTACHMENT A. The listing of all claims pending and the amendments made thereto must be clearly indicated and labeled, as such. Applicants’ directions in the body of the Response are not taken as the clear indication of which claims are being examined, especially when applicants provide a confusing second copy of claims to SN 10/517,588. Neither ATTACHMENT was clearly labeled as the claims under consideration (pending). The copy of claims must be clearly indicated for clerical purposes. This cannot be accomplished when applicants refer to an attachment in the amendment, especially where the application contains one or several, as opposed to having a clearly labeled set of pending claims. Further, since the Examiner has access to the Electronic Desktop Application, the submission of the copending claims is both redundant and unnecessary. Confusing submissions will not be entered and will be deemed Non-Compliant.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation of a “combination” of “extruding, (and) injection molding” is not shown by the Specification, as originally filed, at page 21 (lines 16-21) as applicants contend.

Claims 1, 3-5, 7 and 9-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The recitation of “wherein the metallocene compound is used in each polymerization phase” finds no support for the breadth in the Specification, as originally filed. This phrase may be interpreted in that the metallocene

1) is the same catalyst and is passed from one chamber to another, or

2) may be the same catalyst but added in different chambers.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,3-5, 7 and 9-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of “wherein the metallocene compound is used in each polymerization phase” fails to delineate the steps employed with the metallocene. This phrase may be interpreted in that the metallocene 1) is passed from one chamber to another, or 2) may be the same catalyst but added in different chambers. As such, the proper metes and bounds of the claims cannot be easily ascertained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7 and 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al (US 6,635,715).

The reference to Datta et al teaches the production of a blend, which may be through multi-stage polymerizations, of a propylene copolymer blend that may comprise a propylene copolymer, designated as the First Polymer Component (FPC), having an alpha olefin content overlapping with that recited herein for the second copolymer at 10 to 30% by weight at column 5 (line 65) to column 6 (line 46), which alpha olefin may be ethylene, with the first recited copolymer, designated as the Second Polymer

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Component (SPC), having an alpha olefin content (ethylene) overlapping with that recited herein at 5 to 20% by weight at column 8 (lines 24-49). The range for inclusion of the two polymers is shown at the Abstract. The contemplated molecular weights and MWD are shown at column 9 (lines 34 et seq.). Note the Examples.

Although the reference is silent as regards the haze values, a skilled artisan producing an identical product would have a high expectation to achieve the same haze values recited herein. Likewise, the amount of extractables would be expected, or easily controlled, as crosslink density will determine soluble fractions and a skilled artisan would know to manipulate these values for desired end-use characteristics. As such, a skilled artisan would have a high level of expectation of success following the teachings of the reference to achieve the claimed invention.

Claims 1, 3-5, 7 and 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehta et al (WO 98/10016), cited by applicants.

The reference to Mehta et al teaches the production of a polypropylene blend comprising a homopolypropylene and a copolymer thereof, using a metallocene catalyst in a multi-stage reaction, as herein recited. Note page 21, 3rd full paragraph for the compositional limitations. The copolymer is taught to include ethylene at page 23, 1st full paragraph, and the overlapping amounts at 12 to 15 % by weight is shown in the 2nd paragraph of page 23. The molecular weight distribution is shown at page 24, 1st full paragraph, and overlaps with that recited herein at 2.1 to 3.5. The employment of a nucleant is shown at page 26, 2nd full paragraph. The catalyst and the method of

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polymerization is shown at pages 5 et seq.. Further, note the many Examples. A very low haze value is shown at Table 3, page 43, of 0.3-1.0 %. Since that value was obtained at a thickness of .2 mm (see the 1st full paragraph of page 26), the production of a film of the disclosed composition, ten times as thick, would likewise be expected to have a low haze value.

As such, a skilled artisan producing an identical product would have a high expectation to achieve the same haze values recited herein. Likewise, the amount of extractables would be expected, or easily controlled, as crosslink density will determine soluble fractions and a skilled artisan would know to manipulate these values for desired end-use characteristics. As such, a skilled artisan would have a high level of expectation of success following the teachings of the reference to achieve the claimed invention.

Response to Arguments

Applicant's arguments filed 30 July 2008 have been fully considered but they are not persuasive.

With regard to the rejection of claim 14 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, it is applicants' responsibility to show where the subject matter is derived. The burden is on applicant, not the Examiner, to show the concept. This concept has not been shown as supported by the Specification, as originally filed.

With regard to the rejection of claims 1, 3-5, 7 and 9-18 under 35 U.S.C. 103(a) as being unpatentable over Datta et al (US 6,635,715), applicants argue there is no multiple stage but rather, a reactor blending. This is not so in view of the paragraph bridging column 6 to column 7, where a multiple stage reactor is disclosed. While the product "may be prepared" by a melt blend process, the reference also teaches the production thereof by a multistage reaction, as herein claimed. A reference is taken for the entirety of its teachings, not for isolated passages that applicants choose to purport patentability to their claims. Once a reference teaching a product appearing to be substantially identical is made the basis of a rejection and the examiner presents evidence or reasoning tending to show inherency, the burden shifts to the applicant to show an unobvious difference. In re Fitzgerald, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977). In re Schreiber, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997). Applicants have failed to show anything unexpected or surprising. No direct comparisons have been made.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathan M. Nutter/
Primary Examiner, Art Unit 1796

nmn

27 September 2008